

United States Senate

November 15, 2021

The Honorable Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland,

I am writing regarding recent reports of search warrants executed by the FBI on members of the news media in the course of investigating the alleged theft of Ashley Biden's diary. Earlier this month, the New York Times reported that the FBI had executed search warrants on the homes of several individuals connected to media outlet Project Veritas, including its founder, journalist James O'Keefe.

The Department of Justice follows rules and regulations when investigating members of the news media. The regulations state the Department of Justice "views the use of certain law enforcement tools, including . . . search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices."¹

Given the execution of these search warrants were not "standard investigatory practices," I have concerns about the origins of this investigation, the motivations of the investigations, and tactics used by your Department.

Please respond to the following questions and requests by November 19, 2021:

1. According to court filings, the crimes predating the search warrants fall primarily under the National Stolen Property Act (NSPA), which, *inter alia*, criminalizes the transport of stolen property across state lines.
 - a. Please provide any case where federal prosecutors charged conspiracy to transport stolen goods and/or receipt of stolen goods with respect to a journalist receiving information from a source and describe how that comports with the First Amendment protections articulated in *Bartnicki v. Vopper*.
 - b. Please provide all cases where federal prosecutors charged NSPA where a personal effect such as a diary had been stolen in an isolated incident.
 - c. Please provide the search warrants for any cellphones collected from O'Keefe and his associates as well as the supporting applications.
 - d. Please provide all federal prosecutions where prosecutors charged transportation of stolen property where a good had been abandoned by the complaining owner.

¹ 28 CFR 50.10 (a)(3).

- e. The NSPA has a jurisdictional requirement that the property stolen have a value of \$5,000 or more. Please provide the process in which you assessed Ashley Biden's diary as having a fair market value of \$5,000 or more.
2. Please provide a detailed description of the steps you took to comply with the Department of Justice regulations governing obtaining information from journalists, including steps taken to comply with your July memo broadly prohibiting acquiring journalists' records through compulsory process. If such regulations were not followed, please provide a detailed description about why you failed to follow these procedures.
3. Court records show that reporters from the New York Times contacted James O'Keefe for comments very shortly after federal agents searched the home of an associate and O'Keefe's home. Please provide all communications between employees of the Department of Justice and the New York Time concerning the investigation into the disappearance of Ashley Biden's diary. Please describe any actions the Department has taken to investigate the leaks from the Department of Justice to the New York Times.
4. Please provide all communications between officials from the Department of Justice and the White House concerning the investigation into the disappearance of Ashley Biden's diary. Did anyone at the White House have advance notice of the search warrants for the cellphones of journalists affiliated with Project Veritas?

I look forward to your prompt response regarding this important matter.



Tom Cotton
United States Senator